

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-115093-15

Date:

August 28, 2015

### LEGEND:

Taxpayer =

Company =

Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear

This ruling responds to a letter dated April 29, 2015, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election

under § 856(c) of the Internal Revenue Code to be treated as a real estate investment trust (REIT) for the taxable year ended Date 1.

### **FACTS**

Taxpayer is a State corporation that was organized on Date 2, as a wholly owned subsidiary of Company. Taxpayer is engaged in the ownership, acquisition, and leasing of healthcare-related properties. Taxpayer generates revenue primarily by leasing healthcare-related properties to healthcare operators under triple-net leases.

On Date 3, Company separated its healthcare and real estate businesses into two independent publicly traded companies. The separation was accomplished through the distribution of all of the outstanding shares of common stock of Taxpayer to Company stockholders on a pro rata basis. Taxpayer holds substantially all of the real property that was previously owned by Company. Taxpayer intended to elect to be treated as a REIT under § 856 beginning with its first taxable year ended Date 1.

Firm was engaged by Taxpayer to provide tax return compliance services to Taxpayer for Taxpayer's taxable year ended Date 1, including the preparation of Taxpayer's Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts, various state income tax returns, and applications for extensions of time to file such returns.

On Date 4, Firm delivered to Taxpayer's chief financial officer ("Officer") various income tax return extension forms for the taxable year ended Date 1, with related filing and tax payment instructions, including Form 7004, Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns. Officer was responsible for filing these extensions and making any required payments on behalf of Taxpayer.

Officer failed to file Taxpayer's Form 7004 by the due date of Date 4, because of an inadvertent oversight. On or about Date 5, Officer discovered his failure to file Taxpayer's Form 7004 while reviewing extension forms and payment vouchers for Taxpayer's state income tax returns.

Because Form 7004 was not timely filed, the deadline for filing Taxpayer's federal income tax return, on which Taxpayer's REIT election was to be made, was not extended from Date 4 to Date 6. Firm advised Taxpayer to request an extension of time under § 301.9100-1(c) to elect to be treated as a REIT for the taxable year ended Date 1. Taxpayer anticipates filing the Form 1120-REIT on or before Date 7.

Taxpayer makes the following additional representations:

1. The request for relief was filed by Taxpayer before the failure to make the regulatory election was discovered by the Internal Revenue Service (Service).
2. Granting the relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time Taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.
5. Taxpayer is not using hindsight in requesting relief. No specific facts have changed since the due date for making the election that makes this election advantageous to Taxpayer.
6. The period of limitations on assessment under § 6501(a) has not expired for Taxpayer for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

Affidavits on behalf of Taxpayer have been provided with the submission as required by § 301.9100-3(e).

### **LAW AND ANALYSIS**

Section 856(c)(1) provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year an election to be a REIT or has made such an election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to § 1.856-2(b) of the Income Tax Regulations, the election shall be made by the trust by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to mean an election whose due date is prescribed by a regulation, or

a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed of the required election, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

## **CONCLUSION**

Based on the information submitted and the representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under § 856(c) to be treated as a REIT for the tax year ended on Date 1.

Taxpayer is granted a period of time not to exceed 90 calendar days from the date of this letter to make the election.

This ruling is limited to the timeliness of the filing of Taxpayer's election under § 856(c). This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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K. Scott Brown  
Branch Chief, Branch 3  
Office of the Associate Chief Counsel  
(Financial Institutions & Products)